

REMARKS

In response to the Office Action mailed August 4, 2005, the present application has been carefully reviewed and amended. Entry of the foregoing amendment and reconsideration of the application are respectfully requested.

Drawings

Replacement sheets 2, 3, 4 and 6 are included with the present response. These sheets have been amended to include reference numbers 31, 33 and 37. No new subject matter has been introduced.

Specification

Paragraph 24 has been amended to include recitation of elements 31, 33 and 37, as set forth in Figures 2, 3, 4 and 6. No new subject matter has been introduced.

Rejections under 35 USC §112

Claims 3 – 7, 9 and 10 stand rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims have been amended to address these rejections. Therefore, Claims 3 – 7, 9 and 10 are believed in compliance with 35 USC §112.

Rejections under 35 USC §102

Claims 1, 2, 7, 8, 9, 11 and 12 stand rejected under 35 USC §102 as being anticipated by Workmen (US 6,560,934). The Examiner asserts the "Hinge is not a positive limitation. Intended use, for a vent bar, has given no patentable weight." [Paper 20050801, page 3]

*Claims 1, 2 and 7*

Claims 1, 2 and 7 have been amended and now positively recite in part "a four bar hinge assembly including a vent bar, a first link, a second link, a third link and a track, the vent bar including a first aperture and a spaced apart second aperture."

As Workman does not disclose the recited hinge assembly, nor the cooperating shim body, the rejection of Claims 1, 2 and 7 under 35 USC §102 has been overcome.

*Claims 8, 9, 11 and 12*

Claims 8, 9, 11 and 12 have been amended to recite in part "a four bar hinge assembly including a vent bar having an aperture, a first link, a second link, a third link and a track."

As Workman does not disclose the recited hinge assembly, nor the cooperating shim body, the rejection of Claims 8, 9, 11 and 12 under 35 USC §102 has been overcome.

Claims 1, 2, 7 - 9, 11 and 12 stand rejected under 35 USC §102 as being clearly anticipated by Grosjean (US 4,662,553). The Examiner

asserts "any structure directed to the hinge is given no patentable weight." [Paper 20050801, page 4]

*Claims 1, 2 and 7*

Claims 1, 2 and 7 have been amended and now positively recite in part "a four bar hinge assembly including a vent bar, a first link, a second link, a third link and a track, the vent bar including a first aperture and a spaced apart second aperture." Therefore, applicant respectfully submits a hinge assembly is to be accorded patentable weight.

As Grosjean does not disclose the recited hinge assembly, nor the cooperating shim body, the rejection of Claims 1, 2 and 7 under 35 USC §102 has been overcome.

*Claims 9, 11 and 12*

Claims 9, 11 and 12 have been amended and now positively recite in part "a four bar hinge assembly including a vent bar having an aperture, a first link, a second link, a third link and a track." Therefore, applicant respectfully submits the recited hinge assembly is to be accorded patentable weight.

As Grosjean does not disclose the recited structure, the rejection of Claims 9, 11 and 12 has been overcome.

Rejections under 35 USC §103

*Claims 3 - 6 and 10*

Claims 3 - 6 and 10 stand rejected under 35 USC §103 as being unpatentable over Workmen '934 or Grosjean '553. The Examiner

asserts it would have been an obvious matter of design choice to make the portions of the tabs with a non circular cross-section or whatever form or shape was desired or expedient.

In view of the amendments to Claims 3 – 6 and 10, applicant respectfully submits neither Workman nor Grosjean disclose or suggest the recited four bar hinge assembly, nor the four bar hinge assembly in combination with the recited shim body. Therefore, the recited combination of the tab configuration and the corresponding aperture configuration is not disclosed or suggested by either Workman or Grosjean.

The Examiner relies upon *In re Dailey et al.*, 149 USPQ 47 (CCPA 1966). [Paper 20050801, page 4]

In Dailey, the rejected application was directed to a baby bottle system that "has the exceptional and distinguishing advantage of being ready to yield its contents to the child whatever the position of the bottle may be. Indeed, one position is practically as good as another and the milk comes freely in all positions." The prior art was directed to a similar nursing container having a bottom portion which \* \* \* automatically collapses and retracts into the rigid neck as the last of the liquid is sucked from the container by an infant using the nursing unit, in this way providing a non-colic nursing unit in view of the fact that no accumulation of air is permitted within the container." P 49.

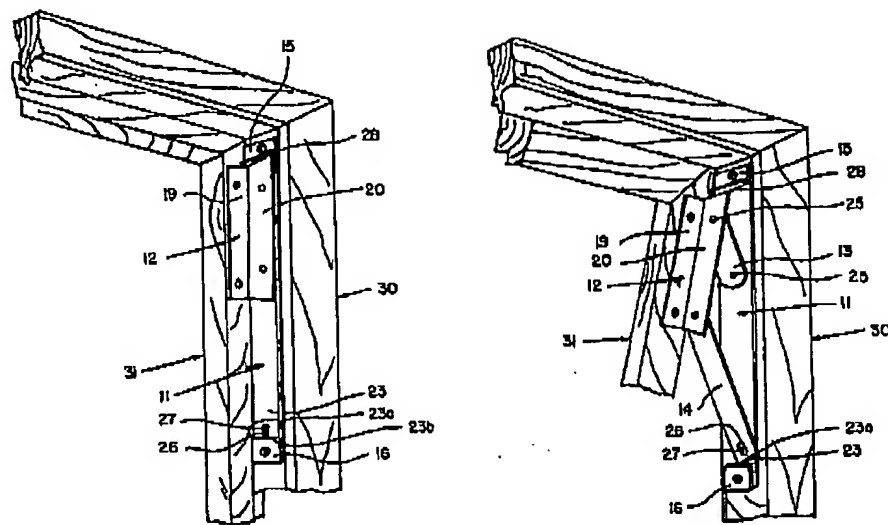
That is, the claimed invention and the cited art were directed to the same device for the same purpose. In contrast, the present invention is

directed to a four bar hinge assembly, such as one interconnecting a sash and a surrounding frame. Workman is directed to a shim between a non hinged (fixed) window and a wood or concrete frame, while Grosjean is directed to a floor guide shim for sliding doors of closets.

*Claims 13 - 19*

Claims 13 - 19 stand rejected under 35 USC §103 as being unpatentable over GB 2233706 in view of Anderson (US 2,154,716). The Examiner asserts GB discloses the invention as claimed but for a shim disposed between the hinged member and the hinge leaf. The '716 patent is relied upon to disclose a hinge having a shim (28) place between the hinged member (22) and the hinge leaf (24) to adjust the relative position of the door in the frame opening. The Examiner further asserts it would have been obvious to modify the hinge leaf (19) of GB with a shim as taught by '716 in order to adjust the relative positioning of the window in the window frame opening." [Paper 20050801, page 5]

The asserted combination is made "to adjust the relative positioning of the window in the window frame opening." [Paper 20050801, page 5] However, the relative positioning of the window (sash 31) in the window frame opening (30) is independent of the location of the GB hinge. That is, during opening and closing of the sash 31, the GB sash engages a hard stop on the frame 30, independent of the location of the hinge 11. Therefore, there is just no need for a shim mechanism in the GB reference.



The proposed modification of the primary GB reference is unnecessary in view of the structure in the GB reference as well as contrary to the reference.

As shown in Figures 2 and 3 of GB, closure of the sash 31 is limited by contacting a portion of the frame 30.

Thus, the opening and closing of the sash 31 relative to the frame 30 is independent of the size of the hinge. That is, the engagement of the hinge 11 with the sash 31 is independent of the relative stack height of the hinge. Thus, there is no need for a shim between the hinge 11 and the frame 30. Alternatively stated, as the sash 31 encounters a hard stop against the frame 30, the use of a shim would not determine whether the hinge can be operably located on the frame.

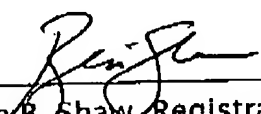
Further, even if a shim were located between the hinge 11 and the frame 30, such would merely relocate the point of engagement of the first leg 19 of a second member 12 and the sash 31, in a direction *not* relevant to location of the hinge or opening of a sash.

With respect to the note by the Examiner that "different cross section" in Claim 16 includes different diameters, the claim has been amended to recite in part "non similar cross section." As set forth in the specification this is intended to define a cross section that differs in more than size or position. That is, the cross section has a different shape, such as circular v. oval or square v. triangular. These are non similar cross sections.

Therefore, all the pending claims, Claims 1 - 19 are in condition for allowance and such action is earnestly solicited. If, however, the Examiner feels that any further issues remain, he is cordially invited to contact the undersigned so that such matters can be promptly resolved.

Respectfully submitted,

Dated: December 19, 2005



---

Brian B. Shaw, Registration No. 33,782  
HARTER, SECREST & EMERY LLP  
1600 Bausch & Lomb Place  
Rochester, New York 4604  
Telephone: 585-232-6500  
Fax: 585-232-2152